



## INDIGENT DEFENSE SERVICES AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, among the Circuit Public Defender Office of the Enotah Judicial Circuit (herein referred to as "the Public Defender Office"), the governing authority of Lumpkin County, a body politic and a subdivision of the State of Georgia (herein referred to as "the County"), and the City of Dahlonega, a body politic and a subdivision of the State of Georgia (herein referred to as "the City"). This agreement is effective July 1, 2010.

### WITNESSETH:

**WHEREAS**, the Public Defender Office, the County, and the City enter into this agreement to implement the provisions of the Georgia Indigent Defense Act of 2003, as amended, including the provisions quoted below; and

**WHEREAS**, O.C.G.A. § 17-12-23 (d) provides as follows:

A city or county may contract with the circuit public defender office for the provision of criminal defense for indigent persons accused of violating city, county ordinances or state laws. If a city or county does not contract with the circuit public defender office, the city or county shall be subject to all applicable standards adopted by the council for representation of indigent persons in this state; and

**WHEREAS**, O.C.G.A. § 17-12-30 (c) (7) provides as follows:

The governing authority of any municipality within the judicial circuit may, with the approval of the circuit public defender, supplement the salary or fringe benefits of any state paid position appointed pursuant to this article; and

**WHEREAS**, O.C.G.A. § 17-12-35 provides as follows:

A circuit public defender office may contract with and may accept funds and grants from any public or private source; and

**WHEREAS**, O.C.G.A. § 36-32-1 (f) provides as follows:

Any municipal court operating within this state and having jurisdiction over the violation of municipal ordinances and over such other matters as are by specific or general law made subject to the jurisdiction of municipal courts shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement,

probation, or other loss of liberty, as authorized by general law or municipal or county ordinance, unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Standards Council for representation of indigent persons in this state; and

**WHEREAS**, O.C.G.A. § 36-32-1 (g) provides as follows:

Any municipal court operating within this state that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Standards Council for representation of indigent persons in this state.

**WHEREAS**, O.C.G.A. § 36-2-1 (h) provides as follows:

Any municipality or municipal court may contract with the office of the circuit public defender of the judicial circuit in which such municipality is located as a means of complying with the municipality's or municipal court's legal obligation to provide defense counsel at no cost to indigent persons appearing before the court in relation to violations of municipal ordinances, county ordinances, or state laws.

**WHEREAS**, the City is a body politic, existing and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and agreements with other political entities; and

**WHEREAS**, the County is a body politic, existing and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and agreements with other political entities; and

**WHEREAS**, the Public Defender Office is existing under the laws of the State of Georgia and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and agreements with other entities; and

**WHEREAS**, it is the intent of the parties to this agreement to provide for the operation of an indigent defense system to assure that adequate and effective legal representation is provided, independent of political considerations or private interests, to indigent defendants in criminal cases in the courts operated by the City consistent with the standards adopted by the Georgia Public Defender Standards Council. This system and this agreement include the following:

- (1) The provision by the Public Defender Office of services to the courts operated by the City;
- (2) The payment by the City for the services provided by the Public Defender Office; and
- (3) The provision for other matters necessary to carry out this agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained in the agreement and for Ten Dollars (\$10) and other good and valuable consideration, **IT IS AGREED AS FOLLOWS:**

## **ARTICLE 1**

### **SERVICES AND PERSONNEL**

**Section 1.01 Services.** The Public Defender Office agrees to provide representation to indigent persons who are defendants in courts operated by the City and who are charged with the violation of a state law or municipal or county ordinance for which upon conviction there is a possibility that a sentence of imprisonment, probation, a suspended sentence of imprisonment, or other loss of liberty or any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty may be imposed. The Public Defender Office also agrees to provide representation to indigent persons in probation revocation hearings in the City Court of Dahlonega and the direct appeal from a decision in cases described above.

**Section 1.02 Conflict of Interest Cases.** The City agrees to provide legal representation by an attorney who is not an employee of the Public Defender Office in cases described in Section 1.01 in which the Public Defender Office has a conflict of interest.

**Section 1.03 Personnel and Payment.** The City agrees to pay the Public Defender Office \$5,500 for the services stated in Section 1.01 of this agreement. The County agrees to act as the fiscal agent for the Public Defender Office for this agreement. The City agrees to pay the above stated amount to the County for use by the Public Defender Office. The amount to be paid includes a 7% administrative services fee. Any additional personnel employed by the Public Defender Office pursuant to this agreement are full-time state paid employees of the Public Defender Office in the unclassified service of the State Merit System of Personnel Administration with all the benefits provided by law to employees in the unclassified service. The parties agree that the employment of additional personnel employed by the Public Defender Office pursuant to this agreement may be terminated by the Public Defender Office if the City does not pay for the cost of these personnel in advance in accordance with this agreement.

**Section 1.04 Compliance with Standards.** The Public Defender Office agrees to provide the representation described in this Article in a professional manner consistent with the standards adopted by the Georgia Public Defender Standards Council. The Public Defender Office specifically agrees to provide services to the City in the courts covered by this agreement in a manner that will comply with the requirements of O.C.G.A. § 36-32-1.

**Section 1.05 Overload of cases.** In the event the Public Defender Office's caseload reaches a size that prevents the Public Defender Office from providing the representation described in this Article in a professional manner consistent with the standards adopted by the Georgia Public Defender Standards Council, the Public Defender Office may give the City 30 calendar days written notice of its intent to suspend taking new cases pursuant to this Agreement. The provisions of Section 3.07 apply during the period of suspension. The Public Defender Office shall give the City 10 calendar days written notice of its intent to lift the suspension of taking new cases. At any time during the suspension of taking new cases up to and including the 5th calendar day after the City receives notice from the Public Defender Office of its intent to lift the suspension of the Agreement, the City may elect to terminate the Agreement by giving the Public Defender Office written notice of the termination; in which event the this Agreement shall immediately terminate subject to the provisions of Section 3.07.

## **ARTICLE 2 OPERATING EXPENSES**

**2.01 Operating Expenses.** The City agrees to pay its share of the costs of appropriate office supplies, utilities, telephone expenses, and materials as may be necessary to equip, maintain, and furnish the office or offices of the Circuit Public Defender.

## **ARTICLE 3 MISCELLANEOUS**

**Section 3.01 Term.** The term of this agreement is 12 months beginning July 1, 2010 and ending June 30, 2011.

**Section 3.02 Severability.** Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this agreement that is judged, held, found, or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this agreement, and the remainder of this agreement shall continue to be in full force and effect. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this agreement shall not affect any other part of this agreement, and the remainder of this agreement shall continue to be of full force and effect.

**Section 3.03 Cooperation, dispute resolution and jurisdiction.** (a) The Public Defender Office and the City acknowledge that this agreement may need to be revised periodically to address new or unforeseen matters.

(b) Each party to this agreement agrees to cooperate with the other party to effectuate and carry out the intent of this agreement.

(c) This agreement, and the rights and obligations of the Parties, shall be governed by, and subject to and interpreted in accordance with the laws of the State of Georgia. The Parties

acknowledge and agree that by law, the exclusive jurisdiction for contract actions against the state, departments and agencies of the state, and state authorities is the Superior Court of Fulton County, Georgia. The Parties further acknowledge that the Fulton Superior Court has a Court sponsored Arbitration and Mediation Program in which the Parties agree to fully participate

**Section 3.04 Notice.** A notice to a party to this agreement shall be made in writing and shall be delivered by first class mail or personally to the person and at the address indicated below:

Circuit Public Defender Office of Enotah Judicial Circuit:

Charles Brown  
1536 Highway 129 South  
Cleveland, GA 30528

Governing Authority of City of Dahlonega:

City Manager

465 Riley Rd  
Street

Dahlonega, GA 30533

Governing Authority of Lumpkin County

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street

\_\_\_\_\_, GA \_\_\_\_\_  
City Zip code

Georgia Public Defender Standards Council:

Director  
104 Marietta Street, Suite 200  
Atlanta, GA 30303

**Section 3.05 Agreement modification.** This agreement, including all Attachments hereto, constitutes the entire agreement among the parties with respect to the subject matter of this agreement and may be altered or amended only by a subsequent written agreement of equal dignity; provided, however, that the parties' representatives identified in Section 3.04 may agree in writing by an exchange of letters or emails prior to the budget revision becoming effective to budget revisions which do not increase or decrease the total dollar value of the contract. This agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to the subject matter of this Agreement.

**Section 3.06 Termination. (a) Due to non-availability of funds.** In the event that either of the sources of reimbursement for services under this agreement (appropriations from the General Assembly of the State of Georgia, or appropriations from the governing authority of the City), is reduced during the term of this agreement, the Public Defender may make financial and other adjustments to this agreement and notify the City accordingly. An adjustment may be an agreement amendment or may be the termination of the agreement. The certification by the director of the Georgia Public Defender Standards Council of the occurrence of reduction in State funds is conclusive. The certification of the occurrence of the reduction in city funds by the person designated in Section 3.04 to receive notices for the City is conclusive. The City shall promptly notify the Public Defender Office in writing of the non-existence or insufficiency of funds and the date of termination. The Public Defender Office shall then immediately cease providing the services required hereunder except for any necessary winding down and transition services required under Section 3.07. In lieu of terminating this Agreement, the City and the Public Defender Office may make financial and other adjustments to this agreement by amending it pursuant to Section 3.05.

**(b) For cause.** This agreement may be terminated for cause, in whole or in part, at any time by either party for failure by the other party to substantially perform any of its duties under this agreement. "Cause" shall mean a breach or default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize). Should a party exercise its right to terminate this agreement under this subsection, the termination shall be accomplished in writing and specify the reason and the termination date. In the event of termination under this subsection, the Public Defender Office shall submit a final agreement expenditure report containing all charges incurred through and including the termination date to the City no later than 30 days after the effective date of written notice of termination and the City shall pay the amount due within 15 days of the receipt of the final agreement expenditure report. Upon termination of this agreement, the Public Defender Office shall not incur any new obligations after the effective date of the termination, except as required under Section 3.07.

The above remedies contained in this subsection are in addition to any other remedies provided by law or the terms of this contract.

**(c) For Convenience.** This agreement may be cancelled or terminated by either of the parties without cause; however, the party seeking to terminate or cancel this agreement must give written notice of its intention to do so to the other party at least 60 days prior to the effective date of cancellation or termination.

**Section 3.07 Cooperation in transition of services. (a) At the beginning of the agreement.** The City agrees upon the beginning of this agreement to cooperate as requested by the Public Defender Office to effectuate the smooth and reasonable transition of services for existing clients, if applicable. This includes but is not limited to the payment for the continuation of representation by current counsel where appropriate or required by law, court rule or the State Bar of Georgia ethical standards or the facilitation of the timely transfer to the Public Defender Office of the client records.

**(b) During or at the end of the agreement.** The Public Defender Office agrees upon suspension, termination or expiration of this agreement, in whole or in part, for any reason to cooperate as requested by the City to effectuate the smooth and reasonable transition of services for existing clients. This includes but is not limited to the continuation of representation by the Public Defender Office where appropriate or required by law, court rules, or the State Bar of Georgia ethical standards or the facilitation of the transfer to the City of the client records. The City agrees to compensate the Public Defender for all post-suspension, post-termination or post-expiration services under this subsection. The Public Defender Office shall submit a monthly expenditure report containing all charges incurred during the preceding month on or before the 5<sup>th</sup> day of each month. The City shall pay the amount due within 15 days of the receipt of the monthly expenditure report. This subsection survives the suspension, termination or expiration of this agreement.

**Section 3.08 Advance of Funds.** The parties agree that advances of funds cannot remain outstanding following agreement expiration and will be reclaimed. The parties agree that upon termination of this agreement, for any reason, all unexpended and unobligated funds held by the parties revert to the party entitled to the funds. The Parties agree to reconcile expenditures against advances of funds within 30 calendar days of termination of this agreement.

**Section 3.09.** Time is of the essence

**IN WITNESS WHEREOF,** the parties have each here unto affixed their signatures the day and year first written above.

ATTEST:



City of Dahlonega

BY:   
Signature  
Manager

ATTEST:

Lumpkin County

\_\_\_\_\_

BY: \_\_\_\_\_  
Signature

ATTEST:

Circuit Public  
Defender Office

\_\_\_\_\_

BY: \_\_\_\_\_  
Signature  
Circuit Public  
Defender

ATTEST:

Consented to:

Georgia Public  
Defender Standards  
Council

\_\_\_\_\_

BY: \_\_\_\_\_  
Signature  
Director